

PATENT
Attorney Docket No. 102.0003-04000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE **RECEIVED**
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| In re Application of: |) | Confirmation No.: 6124 |
| Gary Karlin Michelson |) | Group Art Unit: 3731 |
| Serial No.: 09/626,636 |) | Examiner: Uyen T. Ho |
| Filed: July 27, 2000 |) | |
| For: A GUARD FOR USE IN |) | |
| PERFORMING HUMAN |) | |
| INTERBODY SPINAL SUGERY |) | |

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

INFORMATION DISCLOSURE STATEMENT UNDER 37 C.F.R. § 1.97(c)

Pursuant to 37 C.F.R. §§ 1.56 and 1.97(c), applicant brings to the attention of the Examiner the documents listed on the attached PTO 1449. This Information Disclosure Statement is being filed after the events recited in Section 1.97(b) but, to the undersigned's knowledge, before the mailing date of either a Final Action or a Notice of Allowance. Under the provisions of 37 C.F.R. § 1.97(c), the fee of \$180.00 as specified by Section 1.17(p) is to be charged to Deposit Account No. 50-3726.

Copies of the listed non-U.S. patent documents are enclosed.

The present application is a continuation of Serial No. 08/484,927, filed June 7, 1995; now U.S. Patent No. 6,096,038 (the "'038 patent").

Applicant brings to the Examiner's attention that the '038 patent was the subject of litigation in the United States District Court for the Northern District of California, Civil Action No. C06-02559 (MEJ), hereinafter referred to as Litigation 4. The claims of the '038 patent are generally directed to instruments used in spinal surgery and for preparing adjacent vertebrae to receive an implant and/or inserting an implant. In Litigation 4, the defendant asserted that two references were pertinent to the issue of validity of claim 47 of the '038 patent under 35 U.S.C. § 102. Applicant notes for the

Examiner on the attached Form PTO-1449 in the column for the Examiner's initials the

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references identified by the defendant in Litigation 4 as being allegedly pertinent to claim 47 of the '038 patent by the designation "Lit. 4."

This submission does not represent that a search has been made or that no better art exists and does not constitute an admission that each or all of the listed documents are material or constitute "prior art." If the Examiner applies any of the documents as prior art against any claims in the application and Applicant determines that the cited documents do not constitute "prior art" under United States law, Applicant reserves the right to present to the office the relevant facts and law regarding the appropriate status of such documents.

Applicant further reserves the right to take appropriate action to establish the patentability of the disclosed invention over the listed documents, should one or more of the documents be applied against the claims of the present application.

If there is any additional fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: November 17, 2006

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OMB 0651-0031

| Substitute for FORM PTO-1449 | | Attorney Docket Number 102.0003-04000 | | Customer No. 22882 | | |
|---|---|--|----------------|----------------------------------|----------|-------------------------------|
| INFORMATION DISCLOSURE CITATION IN AN APPLICATION | | Applicant Gary K. Michelson | | Application Number 09/626,636 | | |
| (Use several sheets if necessary) Sheet 1 of 1 | | Filing Date July 27, 2000 | | Group Art Unit 3731 | | Examiner U. Ho |
| U.S. PATENT DOCUMENTS | | | | | | |
| EXAMINER INITIAL | DOCUMENT NUMBER | DATE | NAME | CLASS | SUBCLASS | FILING DATE IF APPROPRIATE |
| | 3,867,932 | 2/1975 | Huene | | | |
| | 4,362,181 | 12/1982 | Reimels et al. | | | |
| Lit. 4 | 5,029,573 | 7/1991 | Chow | | | |
| | 5,183,471 | 2/1993 | Wilk | | | |
| | 5,242,443 | 9/1993 | Kambin | | | |
| | 5,269,772 | 12/1993 | Wilk | | | |
| | 5,395,317 | 3/1995 | Kambin | | | |
| Lit. 4 | 5,423,842 | 6/1995 | Michelson | | | |
| | | | | | | |
| FOREIGN PATENT DOCUMENTS | | | | | | |
| | DOCUMENT NUMBER | DATE | COUNTRY | CLASS | SUBCLASS | TRANSLATION (YES/NO) |
| | 4 036 804 | 5/1992 | Germany | | | Abstract only |
| | 1 050 383 | 12/1966 | Great Britain | | | N/A |
| | | | | | | |
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| OTHER DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.) | | | | | | |
| | The Surgical Amamentarium Instruments Professional Equipment, 1980, American V. Mueller, pages 839 and 989. | | | | | |
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| EXAMINER | | DATE CONSIDERED | | | | |
| EXAMINER: Initial if citation considered, whether or not citation is in conformance with MPEP § 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant. | | | | | | |